UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

VIDEO GAMING TECHNOLOGIES, INC.,

Plaintiff,

vs.) CASE NO. 17-CV-454-GKF-JFJ

CASTLE HILL STUDIOS, LLC., et al.,

Defendants.

TRANSCRIPT OF RECORDED PROCEEDINGS
DECEMBER 6, 2017
BEFORE THE HONORABLE JODI F. JAYNE, MAGISTRATE JUDGE PRESIDING

MOTION HEARING

A P P E A R A N C E S

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PROCEEDINGS:

THE DEPUTY COURT CLERK: This is case number 17-CV-454-GKF-JFJ, Video Gaming Technologies, Inc. vs. Castle Hill Studies -- or Studios -- sorry -- LLC, et al.

Counsel, please enter your appearance for the record.

MR. LUTHEY: Good morning, Your Honor.

THE COURT: Good morning.

MR. LUTHEY: Dean Luthey for the plaintiff, and I have with me as my co-counsel, who have been admitted pro hac vice in this case, Mr. Gary Rubman and Mr. Michael Sawyer of the District of Columbia.

THE COURT: Good morning. Welcome to Tulsa. Mr. Rubman; is that right?

MR. RUBMAN: It's actually Rubman, but --

THE COURT: Rubman. Okay.

MR. RUBMAN: -- people say either.

THE COURT: Rubman and Mr. Sawyer. Okay.

MR. HODGES: James Hodges for the Castle Hill defendants. With me is Robert Gill of Washington and Jonathan Jacobs of Washington.

THE COURT: Okay. Which is which?

MR. HODGES: Mr. Gill (INDICATING).

THE COURT: Mr. Gill? Okay.

MR. GILL: Good morning, Your Honor.

THE COURT: Good morning. Mr. Gill and Mr. Jacobs?

MR. JACOBS: Yes, Your Honor. Good morning.

THE COURT: Okay. Okay. Before we get started, I just wanted to let you all know that I do routinely set these motions to compel or discovery motions for hearing. I do that just because I like to hear arguments from you and because it helps me get to the motions more quickly. But if there's ever a time -- I know you travel a long way for what might be a short hearing and you are more than welcome to request to appear by phone. We do that regularly here. You can send your local counsel and just make a request to appear by telephone and we'll consider that and pretty routinely grant it, especially on some of these discovery motions. I'm not saying I'm not glad you're here -- you are welcome -- but I just want to let you know that that's something that we will routinely grant here, so...

Okay. We're here today on plaintiff's motion to compel trade secret discovery and for entry of a protective order which is docket 47. I want to clarify for you the argument that I really want to hear today and it's kind of limited to two issues. The first is, for lack of a better term, what I am calling the plaintiff's estoppel argument. This really isn't a typical motion to compel because it seeks in more of a preemptive manner to preclude defendant from making a particular objection based on a prior representation that was

made allegedly to you all and to the court. So, it's not a perfect analogy but it's somewhat akin to it. Estoppel argument, based on this representation, they should be estopped from even asserting this objection, and I want to hear argument on that.

I also will hear arguments on your motion for a protective order. I want to know where you are, what you've negotiated, if you've discussed anything further than what's in the motions, and I will hear from you substantively on what your disagreements are on a protective order at this point.

What I don't want to hear arguments on are the substance of the merits of any objections made by defendants to the requests for production after the plaintiff filed their motion. So, whether plaintiff -- or whether plaintiff has adequately defined its trade secret in the complaint to require compliance. I know that defendant has some briefing on that in their motion and some case law, plaintiff really hasn't had a chance to respond to that, and I just don't think that's what's before us today, so I don't want to hear substantive argument on that particular thing. We're going to limit it to those two arguments.

Does anyone have any questions as to how we're going to proceed?

MR. HODGES: No, ma'am.

THE COURT: Plaintiff? No.

Okay. Well, then, with that, I will start with the plaintiff. You're recognized in support of your motion on those two issues.

MR. RUBMAN: Thank you, Your Honor. May I approach?

THE COURT: Yes, please do.

MR. RUBMAN: Good morning, Your Honor.

THE COURT: Good morning.

MR. RUBMAN: Gary Rubman from Covington and Burling. It's a pleasure to be down in Tulsa, so we appreciate the opportunity.

We did prepare a couple of slides that I thought would be helpful for understanding the background. If I may hand them up. Would that be okay?

THE COURT: Yes, sir.

MR. RUBMAN: So, focusing on the -- I think what you called the estoppel argument or maybe a waiver argument --

THE COURT: Sure.

MR. RUBMAN: -- or --

THE COURT: You can call it -- you don't have to stick with that phrase. That's just helping me in my mind to keep it straight, but you can --

MR. RUBMAN: Sure.

THE COURT: -- call it anything you would like.

MR. RUBMAN: It is a little bit of a unique posture we have here, and we recognize that, but we think the background

and what led to this appearance today is a bit unusual and so that's why we thought it would be helpful to, in a couple of slides, go through the history and explain kind of why we feel like the motion should be granted.

The basics here is there was going to be a scheduling conference on the 30th of October. That was right before they switched -- or right after they switched counsel. We got a call and they said, "We really want to cancel that conference." To do that, we reached a deal. In our view, they've reneged on that deal and I think the slides will help explain that.

The first slide, slide 2, is really to show kind of where we started and where we are now. On the left -- this is what was said in the joint status report. This was the only issue in dispute when that status report was filed. It was the only issue that was going to be argued on October 30th. And there, you'll see that they say, "The court should delay any discovery plaintiff obtains from defendants relating to the misappropriation of trade secrets until plaintiff has described with reasonable particularity the trade secrets and confidential information." That was their objection. That was the dispute.

Now, fast forward to where we are today and their opposition to the motion to compel. They're raising the same argument. "VGT must specify with particularity the trade

secrets at issue in its complaint before Castle Hill produces its highly confidential business information." That's really where we are.

The next slide -- and I won't go through all of these, but even in their opposition brief there's some inconsistencies. These are all quotes from the opposition brief they filed a couple weeks ago. Page 5, they say, "We're not sequencing, we're not doing what we said before that we were waiving." It says, "But Castle Hill has not asked the court to sequence or otherwise stay discovery regarding the trade secret claims."

On the right, and I won't read them to you, there's three examples of quotes in that same brief later on where they actually pretty clearly say we are sequencing. They use the word "before," they use the word "prior to," and again I won't read the quotes to you but the cites are there.

So, with that as the basic background, the next few slides are really kind of, again, a little more of a step-by-step way of how we got to where we are, and we thought it was helpful to actually show the language from the joint status report on slide 4.

Our position, "Defendants therefore should not be permitted to delay responding to plaintiff's pending discovery requests." Their position, which as I read, was that we first need to describe it with reasonable particularity, which, again, we have differing views on whether we have, and I understand the

court's request that we not discuss that today.

And then we have the new counsel arrive, and here's the e-mail exchange. Again, this was included as exhibit A --

THE COURT: Yes.

MR. RUBMAN: -- but -- and we've modified it slightly just so it fits on the slide, so there's an ellipses here, so I don't want to -- I mean, there are other things in this e-mail exchange but --

THE COURT: I've reviewed the whole e-mail exchange, so --

MR. RUBMAN: Okay.

THE COURT: -- that's fine. No, I want you to go through this the way you want to, but I just want you to know don't worry about ellipses, I've seen the whole thing, --

MR. RUBMAN: Okay. Thank you.

THE COURT: And e-mail chains can be hard to read, so --

MR. RUBMAN: Yes, --

THE COURT: -- I appreciate that.

MR. RUBMAN: -- we're trying to simplify it and we're doing our best, but again, the essence of the deal is here, is that they will immediately drop the timing base or the sequencing objection on trade secret.

We also, point number 2, which is omitted from the slide, is they'll negotiate in good faith the protective order and ESI

agreement by I think it was the 8th was the day we put in there. Those were two of the things we said, "If you do that, we get the fact you just switched counsel." Mr. Gill had a trial coming up the next week. You know, we didn't want to -- we wanted to be reasonable, but that was the deal we struck and that was the deal we relied upon in canceling that scheduling conference. But for that deal, this issue would have been argued on October 30th.

THE COURT: Let me ask you on that point. So, do you believe that Judge Frizzell, in his scheduling conference, was going to address the substantive question that's now, you know, kind of trickling in front of me on these issues, or do you think he was just going to decide we're either going to stay discovery pending the motion to dismiss or we're not?

MR. RUBMAN: Well, that issue wasn't raised in this joint status report. They never said they're seeking a stay of discovery while the motion is dismissed or pending. All they said was this one issue, this was one disputed issue in there, and it was this. So, obviously I don't know what he was thinking. Perhaps he was --

THE COURT: Sure, sure.

MR. RUBMAN: -- going to view it as a motion to stay. But they've never filed that motion and, in any event, they bear a very heavy burden on that motion. The case law in Oklahoma is pretty clear that staying discovery pending a

motion to dismiss is unusual and they have to have a compelling need, and they haven't raised those arguments, they haven't argued burden, they haven't argued any of the arguments you typically would raise in such a motion. So, it's possible that would have been the way he handled it but, you know, all we know is there was one disputed issue and this was it.

THE COURT: Let's talk for a minute about the consent motion to strike scheduling conference since we're on that and the language that was used. And I guess defendants drafted this; is that right?

MR. RUBMAN: So, this is slide 6 --

THE COURT: Okay.

MR. RUBMAN: Yes, --

THE COURT: Need to skip ahead?

MR. RUBMAN: -- we're on the same page, but -- so then they said, "Okay, fine, we want to file this consent motion." All we said, and there's an e-mail in the exchange, is, "Just make it clear that you're dropping the objection that's in the joint status report." I forget the exact language we used. And then they wrote, and this is paragraph 5, again shown on slide 6, "The parties requested a scheduling conference to address defendants' request that discovery be sequenced as to plaintiff's trade secret claim. Defendants have agreed to withdraw the request."

THE COURT: And you're saying, to you, and based on

these e-mails, that to you that meant, "Not only are we withdrawing our request for things to be sequenced, we're going to immediately produce them without this particular objection that we've been talking about?" That's what you believed that agreement was?

MR. RUBMAN: And we tried to confirm that in a subsequent exchange.

THE COURT: Yes.

MR. RUBMAN: If you've seen the exchanges, I won't belabor the point. But, yes, we were clear on the phone with them. There was a pretty clear, in our minds, understanding of that. That's what we cared about and that's really a basis on which we agreed to cancel that conference.

THE COURT: Okay. You can go back to slide 4. Thank you.

MR. RUBMAN: No, it's fine. I think we should move on.

THE COURT: Okay.

MR. RUBMAN: Things then progressed. I won't belabor the points on the others, but I do want to then go to slide 9.

So, they then -- and before we get to slide 9, actually, they then refused to meet and confer. Time and time again we asked for opportunities and they either would say, "Okay, we're available the following days," and so we said, "Okay," and then they were not available. Or they proposed a deal, "Well, how

about both sides exchange this on November 22nd," and we said, "Okay," and then they backtracked from that.

So I think, you know, when you go through this chain of e-mails, I think it's pretty clear what both sides were focused on. They even offered us the deal to exchange both on November 22nd and we accepted it. So, you know, at least that's our understanding of this.

So then things went forward. They refused to meet and confer. We tried, we offered to go to their office, which they're a few blocks down from us, and we never got a response. We filed a motion. They then ultimately filed their opposition. But in the interim, the parties did serve discovery requests on November 22nd. We served pretty extensive requests subject to there not being a protective order in place, so we avoided confidential information. But, you know, 50-page responses I think we gave them. We produced I think a little under 2,000 pages of documents in several categories. They also served responses, which included mostly objections. They objected to virtually everything. But they did serve a couple responses. And there's one I want to highlight in particular which I think is interesting for this case to kind of show what's going on.

In interrogatory number 13, we said, "Describe all information, documents, and things in your possession, custody or control, that any former VGT employee brought from VGT to

Castle Hill, were created by or at VGT or are the property of VGT." So, we're basically saying, "Tell us what stuff you have that's ours."

Their response, in part, "None of the former VGT employees were asked to bring documents with them. And Castle Hill's practice was and is to tell former VGT employees that they're prohibited from bringing into Castle Hill any documents belonging to plaintiff." They didn't say, "We didn't take anything with us." What they said is that none of these employees were asked to bring it with them. So they're very selectively, and in our mind, doing in a very kind of questionable way answering some discovery but not others.

THE COURT: And that can be the subject of a separate motion to compel. I don't feel like that's what we're here today on.

MR. RUBMAN: Sure, but --

THE COURT: Do you agree with that?

MR. RUBMAN: -- then when you look at, on slide 9, we've put in examples here of just -- it goes to their point about this being premature. And I don't know if you want to hear anything on that or not, but they basically say, "Well, we filed too soon. How do we know what their objections were going to be? How do we know what they were going to stand on?" Well, then, in fact, they filed their responses and they stood on this.

THE COURT: I understand, but I don't have those in front of me. I haven't had a chance to read those or review those or hear arguments on. You know, I'm not overly concerned about meeting and conferring. I do think that's an important requirement before you file this motion. What I'm most concerned about is the fact that I haven't had time to really look at -- digest the request and the objections.

MR. RUBMAN: Okay. Sure.

THE COURT: I mean, is this what I have in front of me, page 9 of your slides, or am I mistaken in that the objections are a part of the record?

MR. RUBMAN: They are not.

THE COURT: Okay.

MR. RUBMAN: When Castle Hill filed its opposition, it didn't include them. We obviously didn't have a reply brief.

THE COURT: Right.

MR. RUBMAN: This was in here in case you were concerned about the argument about being premature.

THE COURT: Understood.

MR. RUBMAN: Just to show that they did, in fact, then rely on it. And we can move on if that's not a concern today.

But having walked through the background there, I mean, I think our story, our argument should be fairly clear, is that in our mind we had a deal. We think the communications and the correspondence both with us over the phone and by e-mail, as

well as with the court, confirm that and we think that they're reneging on that deal and that's really why we're here.

THE COURT: Tell me what prejudice you think you've suffered as a result of that at this point.

MR. RUBMAN: Well, we want this case to get moving. We think there's a lot of smoke, we think there's a lot of fire here. In our mind, they are literally copying our games. We won't go into detail there. They're some of our most senior former employees. There's a lot of reason to believe very strongly that they're using our trade secrets. We want this discovery, we want to proceed quickly, and we've been trying to proceed quickly. We want to get to injunctive relief. Once we get that discovery, we think we'll be in a position, depending on what the discovery shows, we think it's going to confirm everything we're saying and we want to file a preliminary injunction and we've told them that and that's why we want this case to move. We want to get into discovery.

THE COURT: The fact that you don't have a scheduling order in place makes it less important that we move quickly, to me. I understand that he didn't -- Judge Frizzell did not stay discovery, --

MR. RUBMAN: Uh-huh.

THE COURT: -- obviously, and you guys are proceeding with discovery. But the fact that he entered an order that says, "I'm going to wait to enter a scheduling order until I

rule on the motion to dismiss," does not help your case.

MR. RUBMAN: Well, it is effectively then doing a unilateral motion to stay discovery is what they've done here. They've selectively decided which discovery to stay and which discovery to proceed with.

THE COURT: And you can seek to compel that. I mean, like I said, I don't view Judge Frizzell's order as precluding you from going forward with discovery, but the fact that he doesn't have a scheduling order in place and we're not dealing with deadlines like we normally are certainly doesn't -- it just seems like there's less prejudice and there's more time to go through the normal processes that we would normally go through --

MR. RUBMAN: Right.

THE COURT: -- on a motion to compel.

MR. RUBMAN: Well, the aspect of prejudice is they are continuing to launch games, they're continuing to cause harm to our client, they're continuing to compete out in the marketplace throughout Oklahoma and elsewhere. The sooner we can move, the more we can minimize that harm. So we do want to proceed, we want to move, and that's why -- so this motion to compel is really focused on just the very specific categories of information that were part of that deal. We didn't try to ask them for everything then. And to be clear, we were focused on what's called the regulatory submissions and testing lab

submissions. These are the documents they submit to get their games approved, including their source code and their underlying math. These are materials that they're required to maintain and submit to the regulatory bodies but also then maintain. So there should be very little burden and this will go to the core of the allegations in this case, at least this part of the case; there's the separate trademark and trade dress stuff, but... So that's what we were really focused on here and that's really --

THE COURT: And that's your request for productions 1, 6, and 7, that's the focus of --

MR. RUBMAN: Yeah.

THE COURT: -- that; correct?

MR. RUBMAN: Yeah. And so if we could have an order -- and we're happy to produce the same, we've told them that. That's what this is about. We're not here asking you for the relief on all of the other issues. We recognize that's outside this motion. But what this motion really in our mind is about is about that deal, and that deal was clear in that e-mail that the regulatory submissions, the testing lab submissions, those include the math, the source code, and that's really what we're getting at. We're not asking for any other relief at this time.

THE COURT: I understand.

MR. RUBMAN: On the issue of the protective order, my

colleague, Mike Sawyer, was going to handle that. I don't know if you want to do these all together or separate.

THE COURT: Yes, I'd like to stay with the plaintiff and hear on the protective order.

MR. RUBMAN: Okay. May I have Mr. Sawyer address that?

THE COURT: Yes.

MR. SAWYER: Good morning, Your Honor.

THE COURT: Good morning.

MR. SAWYER: So, on the protective order we've been trying to negotiate it for about 10 weeks now. Because this is a trade secret case and we knew we'd need to have a protective order in place so discovery could proceed. Before the Rule 26(f) conference, we sent Castle Hill a proposed protective order. That was about 10 weeks ago. And there's been about a dozen e-mails on this. We've only had one meet-and-confer with Mr. Jacobs. During that meet-and-confer, which happened back in October, the parties seemed pretty close to an agreement on the terms of a proposed protective order except for on one sticking issue with regard to how many non-lawyer representatives would be able to see confidential information. But since that one meet-and-confer, we have not been able to get any meet-and-confer with the current counsel, Mr. Gill's firm, and, as a result, we can't proceed to provide the trade secret information they're asking for.

They agreed to make best efforts to meet and confer and enter a protective order by November 8th and they made that agreement in advance of the scheduling conference so that -- that was part of the deal to cancel the scheduling conference. After the scheduling conference was canceled, they have not provided a single substantive comment on the protective order. They have been unwilling to meet and confer. We had two separate occasions in which they said they were available to meet and confer. We told them, "So are we. Let's go ahead and come to our offices or we'll go to yours," and they just wouldn't follow through on that.

So, in terms of where the parties are actually apart on the protective order, there's actually kind of an ironic aspect in that some of the criticisms of the proposed protective order in the opposition brief are to revisions to the court's default protective order that were originally proposed by Castle Hill. So, I can get through those as we go through the specifics.

But there's basically three revisions to the court's default protective order that we've proposed. Two of them seem to be not objectionable to Castle Hill. The first is the source code provision. We've added that in just so that there are technical protections so the source code can't be stolen if it's on a network machine. And it doesn't appear Castle Hill objects to that.

The second major change is we proposed a change to the

procedure for handling sealed filings so that we can lodge a sealed filing with the court in the event a motion to seal hasn't yet been granted, and that's just out of the concern of what to happen if a motion to seal would be opposed, how we'd actually provide the sealed filing by the deadline. Again, Castle Hill doesn't appear to be concerned with that.

The last change is who can see the designated information. And here Castle Hill appears to want to have more employees have access to the confidential and highly confidential information than VGT does. And while we recognize the court's default protective order has terms in there, even Castle Hill proposed changing some of those terms, and I think the reality here is these are parties who are competitors; this is not a traditional case in that when you have, you know, competitors in the marketplace, we have Castle Hill machines right next to VGT machines on the casino floor, they're both competing to sell these machines to casinos and, as a result, when they're requesting very sensitive business information like our future business plans, our financial information, the cost of our games, our source code, our pay tables, things like that, that's the type of thing we really want to be sure is protected and can't be accessed by employees who are then going to -- whether through bad intentions or even their own inadvertent intentions, once they know it, they can't unlearn it. And that's where the case law in this area recognizes that if an

employee gets access to confidential information of a competitor, they won't be able to not use it throughout the course of their regular employment when they're making their own competitive decisions about how Castle Hill should go about running its business.

So, with respect to the specific terms that appear to be of concern to Castle Hill, we have -- for the highly confidential information, there appear to be three complaints in their opposition brief. The first is that we've proposed that outside counsel be of record in the litigation. That's simply so that the court has disciplinary authority and jurisdiction over the outside --

THE COURT: Let me stop you for a second. Which provision are you talking about now on your proposed protective order?

MR. SAWYER: Certainly, Your Honor. Let me just grab it.

THE COURT: And I'm looking at the document that's attached as exhibit E to your motion.

MR. SAWYER: Great. So this would be what Castle Hill's concern here is, it's on page 11, paragraph b.i.

THE COURT: Okay.

MR. SAWYER: Now, the court's default just provides for outside counsel to receive access. The only change we made there was that the outside counsel be of record so that we know

who's seeing our confidential information and they will have entered an appearance and therefore be subject to the jurisdiction of the court. We don't think that's causing any prejudice to Castle Hill. All they have to do is have outside counsel enter an appearance.

The second complaint that's in Castle Hill's opposition about the highly confidential information is that our proposed protective order eliminates access by in-house counsel. It's a little hard to understand why that's objectionable given that they don't have in-house counsel, but that was part of an agreement that was reached in exchange for, you know, -- basically what happened was when they first sent us their proposal, they proposed eliminating the ability of company representatives for VGT getting access to Castle Hill's confidential infor- -- highly confidential information. And in exchange for that proposal, we said, "Well, look, if you don't want our employees to be able to see the highly confidential information, your employees shouldn't be able to see that either," and ultimately Mr. Jacobs and I had a phone call and we basically reached agreement that also we take away the ability for in-house counsel to access it, so even VGT, which has in-house counsel, wouldn't be able to see it either. That's a fairly standard provision, that there be some level of designation, that is, outside counsel eyes only. So, that's for the highly confidential information.

If I can turn to the confidential information. So, again they appear to have three complaints in the opposition brief. One is that it, again, would limit access for in-house counsel to only three attorneys.

THE COURT: Uh-huh.

MR. SAWYER: The same basic issue, it's hard to see how that causes prejudice. If they want more in-house counsel to have access to the confidential material, I don't think that's a huge sticking point for us, but we proposed three so that it wouldn't be everyone on VGT's legal team out of concern for them.

And then the second complaint is that our proposal would eliminate access by parties entirely. That's not what our proposal does. Our proposal has one party representative is able to see the confidential information. And they suggest that that's too low, they want it to be five, and we understand that is the court's default; however, these are competitors, and in situations where competitors are seeking access to each other's trade secrets, it's important that there not be widespread access.

And consistent -- we've seen examples of a trade secret case before Judge Frizzell where it was just two company representatives. We have other examples where, in a patent case in this court's district in Colorado, it was just one company representative for confidential information.

But the really important aspect for us is we've asked Castle Hill, "Tell us why you need five. Are there five people overseeing the litigation?" And they haven't provided any reason why they need five. They just have said, "We want five."

So, the concern here is that if these people get access to it, we know they're not going to be lawyers, they're not going to be subject to having -- the risk of having their bar license taken away if they violate the protective order, and we -- even if they're well intentioned, there's a risk that once they learn the information that's designated as confidential, they could then go ahead and use it, even if they're not trying to, once they know this is Castle Hill's price -- or VGT's price with this vendor, if they're buying from the same vendor, they're going to have that benefit of that knowledge and they won't be able to compartmentalize it in their mind. So, for that reason, we'd suggest limiting it consistent with the examples for protective orders between two competing companies.

And, with that, I'll just note, one argument they make in the opposition brief is that we -- well, let me say it this way. They don't contest that we'd be harmed if their employees were to have access to this information. All they say is that the harm may have already occurred so we shouldn't care about it. And it's kind of a funny argument to make because they haven't admitted yet that their employees have accessed the

information. They also haven't denied it. But we should not give, you know, unfettered access to our confidential information, especially given that they're discovery requests, they're not limited to the materials that VGT had when Castle Hill employees were there. It includes materials that continue to be created.

So, with that, Your Honor, unless there are any questions, I'll --

THE COURT: No. Thank you.

MR. SAWYER: Thanks.

THE COURT: Mr. Gill?

MR. GILL: Good morning, Your Honor.

THE COURT: Good morning.

MR. GILL: I think it's important to point out, too, the contextual background for what was going on. This case obviously had been filed and predecessor counsel had filed a motion to dismiss and we were in the process of taking this case over literally days before I was ready to begin this jury trial in Virginia that began on Monday the 30th, which was the same date that the conference was scheduled in this court. And I had a phone call with counsel where we talked about that, among other things, the fact that I had a trial coming up on that Monday. And what I had understood, the previously-made objection made by counsel to be, that basically we don't think we should be engaging in trade secret discovery until such time

as the court rules on the motion to dismiss. That's what I was thinking, and I said that in the phone call with counsel from Covington on that Friday before the Monday hearing where we were trying to figure out the parameters of what the agreement was, which was a little mushy in the phone call. But I remember laughing and saying to them, "Well, I'm not going to take the position that you have to wait and get a ruling on the motion to dismiss before you engage in trade secrets discovery," and I clearly intended to comply with that, that representation.

What we did not discuss, and what I did not intend to waive or relinquish or give up is substantive objections that we may have to individual discovery requests. So, I had thought that what predecessor counsel was going to do was to ask the court at the scheduling conference for a formal stay of discovery so trade secret discovery could not proceed at all until such time as the motion was resolved.

And to be candid, and I mean this with no disrespect to my predecessor, because I thought the motion they prepared was well done, well written, but at the same time I didn't feel comfortable taking the same position. I thought I was being more reasonable by saying I'm not going to take that position, but at the same time I never agreed to roll over and give complete access to my client's highly confidential information without objection. I never intended to do that.

And I'm also in the process of taking over the case, learning about the case procedurally, learning about the case factually. There was a lot I didn't know about the case at that point. There's a lot I still don't know about the case. But with regard to the issue of documents, we did serve objections and responses on the 22nd as was agreed. We did not produce documents on the 22nd, any documents. And I will tell the court I couldn't produce documents on the 22nd.

Predecessor counsel used an outside firm to process electronic data. We did not want to use the same outside firm. We wanted to bring that data in-house. We have our own review platform that we use with, you know, software review the documentation. And to be candid, we had difficulty dealing with the outside vendor and getting the data. We didn't have the data by the 22nd. I sure couldn't review and process and produce anything by the 22nd.

So, there's a suggestion here, subtle though it may be, that there was foot dragging on the part of the defendants who were not interested in doing what was supposed to be done when actually what I was trying to do was I was trying to be careful and I was trying to tell them at the same time in good faith what my position was going to be. So, I never said to them that, "Look, we're going to give up these substantive objections to the trade secret request."

And I was actually very glad to hear Mr. Sawyer raise the

issue in the context of the protective order discussion about trade secret law and how trade secret law doesn't prohibit the use of information what a former employee has in their head because to me, as I come into this case, and I have tried a few trade secrets cases, that is the elephant in the room in this case, and there's a lot of recent press on that. There is a trade secrets case that the court may be aware is raging right now in the Northern District of California before William Alsup and that was brought by Waymo against Uber Technologies and there's frequent commentary in the legal press on that case.

The reason that it's relevant to this is that case was going to trial this week and it was continued the last minute for discovery issues. But in connection with a hearing on jury instructions in that case, Judge Alsup blasted the parties for not submitting an instruction to deal with what he termed the lobotomy issue, quote/unquote. I wouldn't use the same term but he's the judge, he can use whatever term he wishes. And that was exactly the issue that Mr. Sawyer just mentioned to Your Honor, and, that is, a trade secret law does not reach information that's in the heads of the former employees. You can try to reach that with a noncompete agreement, and this plaintiff did restrict information and competition with noncompete agreements, but that was long ago. So this plaintiff had actually been a Virginia entity and they had left Virginia and moved to Tennessee and they left a lot of talent

behind. So, this wasn't a situation where people left the plaintiff's employ, went to a competitor and took, you know, computers or thumb drives full of information, because to my knowledge, based on what I know now, standing before you today, I have no knowledge that any of my people took anything from the plaintiff.

When I gave the discovery responses, I couldn't say that I had reviewed the documents and couldn't find anything because I couldn't review the documents. But based on what I know today, I have no knowledge that any of these defendants have taken any information from the plaintiff in this case at all.

And so, to me, what the Honorable William Alsup referred to as the lobotomy issue is going to be a big issue for us in this case. And for me, that's an issue that really makes the issue that we briefed in our opposition brief about needing to specify what the trade secrets are so we could respond particularly critical for us. It's relevant to the motions before the court today, it's relevant with regard to discovery objections and responses going forward, and it's relevant to the protective order as well, I think.

So, there's a lot of issues that are wrapped up together. I am going to try to do this as much as I can in a linear way and respond to counsel's arguments as they raise them with the court.

With respect to Your Honor's question to counsel about time

and prejudice, I think the answer to the question is pretty clear: there is no prejudice, this case is early on, there is no scheduling order.

I also want to tell the court that the plaintiff sent a cease and desist letter to the Castle Hill defendants a year before the litigation was filed, didn't file the litigation for a year, so the notion that the plaintiff is going to come into court and show irreparable harm based on the passage of time, I think, is belied by the time line in the record in this case. So, there is no prejudice. If they thought there was prejudice, they would have filed suit sooner and they would have requested some sort of injunctive relief.

But I think it is clear, we are entitled I think under the cases that we have cited to Your Honor, we are entitled to know really more of the substance of what their claims are because, you know, I looked at the complaint and the allegations in the complaint are very much like the case that we cited in our brief, this *DeRubeis* case, which is from the Northern District of Georgia. And, you know, in paragraph 41 they say that it relates to the math underlying the games and the specifics of the manner in which the bingo game is played including the so-called ball drop, and the source code used to operate the games. But there's no specificity at all.

And the reason we need the additional information is, first of all -- and I put this in my e-mail to counsel, I wasn't

hiding the ball, my e-mail was that part of the record in this case says, "Your allegations are vague and conclusory." I need to know what the basis is for your claims so I can determine the scope and relevancy of discovery because, without that, I can't tell. It can't be everything I've got. I can't do that. I owe it to my client to resist that issue and that's what I'm trying to do, but I'm telling the court I'm trying to do it in a way that I think is reasoned. I'm not asking that trade secret discovery be stayed until ruling on the motion to dismiss. I understand that could take many months. I'm not asking for that. But I do have a right, I think, to know what the plaintiff has in connection with these allegations before I respond and provide my client's confidential information, particularly with the --

THE COURT: Mr. Gill, let me stop you. And like I said, I'm not going to decide that issue --

MR. GILL: Yes, ma'am.

THE COURT: -- on this motion.

MR. GILL: All right.

THE COURT: I'm going to decide whether you're going to get to make that objection or not.

MR. GILL: I understand.

THE COURT: And so --

MR. GILL: I understand.

THE COURT: -- there's no reason to go too far --

MR. GILL: I understand.

THE COURT: -- into that.

MR. GILL: I understand.

But, in any event, there was no discussion among counsel, when he was talking about continuing that hearing, there was no discussion about waiver of any objections. None. No discussion.

So, in any event, it was our intention at the time that we would deal with these discovery issues on an ongoing basis as they arise in the normal course, as they typically do, meaning the party serves a request, the other party serves an objection and response, and if you don't like the objection and response, then you challenge them in the motion. That's what we anticipated by that. That's exactly what we anticipated by that.

Now, with regard to the issues relating to the protective order, counsel is correct on several issues. I don't object to the language they propose with regard to the source code. To the extent source code is produced, I think the language that has been proposed in the protective order is acceptable for that.

So Mr. Sawyer represented to Your Honor that I didn't object, and he's right, --

THE COURT: Okay.

MR. GILL: -- I don't.

THE COURT: Thank you.

MR. GILL: All right. Mr. Sawyer represented to Your Honor that he didn't think I objected to their proposed language about the sealed filings, and I agree with him on that too.

I think that if we're going to have a protective order that provides for documents that need to be filed under seal, the order should give us carte blanche to be able to file those documents under seal in accordance with the terms of that order without having to do a filing every time. I think that's usually the way I've seen it done. I've never had a court say that we've got to do seriatim filings in order to be able to do that, and I think this provides a framework for that and I don't -- I don't object to that.

THE COURT: I will just tell you, both of you, this goes to both of you, and I'm more than willing to consider it if you jointly agree to that, but I have been -- I have never seen that type of limitation on motions to seal. This court routinely requires them, even in cases with a whole lot of confidential information and a whole lot of trade secrets, --

MR. GILL: Right.

THE COURT: -- every time there's a sealing, there's a motion to seal that happens before it. So that is our normal practice. Like I said, --

MR. GILL: Right.

THE COURT: -- I'll consider it, especially if you agree to it, but I'm skeptical --

MR. GILL: Right.

THE COURT: -- of that. I haven't seen it. I was involved -- we have a multi-district litigation going on right now, and every time there's a motion to seal, granting, --

MR. GILL: Right.

THE COURT: -- and then it's sealed.

MR. GILL: Right.

THE COURT: So, I'm --

MR. GILL: Right.

THE COURT: -- happy to hear that. I'm just letting you know --

MR. GILL: Right. Well, --

THE COURT: -- that's something that I'll have to really consider.

MR. GILL: I understand. And just like the plaintiff is the master of its complaint, you're the master of your docket. If you want all those filings on your docket, we'll obviously comply --

THE COURT: Sure.

MR. GILL: -- with your requirements. But I do want to say I think the methodology that the plaintiff has proposed on that particular issue is reasonable, and I think if the order contemplates the fact that we're going to have this

confidential information that should not be made publicly available, then the order should provide us with a mechanism to go ahead and submit that information under seal. I think it is a less costly, less burdensome procedure for all involved --

THE COURT: Yeah.

MR. GILL: -- but obviously, you know, we'll abide by whatever Your Honor wishes.

THE COURT: And that provision is designed to prevent oversealing, and --

MR. GILL: Right.

THE COURT: -- parties getting lazy --

MR. GILL: Right.

THE COURT: -- not just saying, "I'll seal it," file it under seal, and courts -- this is really to protect the court's interest in public access to documents --

MR. GILL: Oh, I understand.

THE COURT: -- so that we can look at a motion and say, --

MR. GILL: Right.

THE COURT: -- "Don't know if that really needs sealed or not."

MR. GILL: Right.

THE COURT: So, that's the principle the provision is trying to vindicate.

MR. GILL: Well, and if it weren't for the trade

secret aspects of this case, I think that would be fine, but I think these cases are unique for a number of reasons and I think that's one. I think we know, going into this, that there's going to be a lot of data that's going to be designated under that order and there's going to be a lot of those motions.

THE COURT: Sure.

MR. GILL: So, I think you may be tired of seeing them on your docket after a while. So, -- in any event, but like I said, I do agree with that and --

THE COURT: Okay.

MR. GILL: -- but obviously we'll abide by whatever Your Honor says on that.

With regard to the content of the order, I do have some objections. You know, the form order that this district uses does not prohibit client access to just plain confidential information, and the red-line document that I got struck through the language that provided for party access, which was the basis for my comment in my brief.

Counsel is correct that there was other language in that, and I address this my brief also, that talked about having a representative have access to that.

But, you know, here's a position that I find myself in: I've come into the case that's already pending and I'm trying to get a grip on what's going on factually and procedurally and

legally, and I'm drinking out of a fire hose, so to speak, and I'm trying to figure out what I need to do in order to be able to defend the case and communicate meaningfully with the client with whom I have no prior relationship before this case, and I feel like my client has a right to be able to participate meaningful in the defense of this action.

And my concern in looking at the order, first of all, in all my years of practice, and you can probably tell by the absence of hair on my head and the gray in my beard, that that's a number that begins with a 3 at this point, I've never seen a protective order that limited client access to just plain confidential information. I've seen it with respect to highly confidential information but just not plain confidential information, and I think that is an unworkable restriction.

I would like to have the opportunity to discuss this with the client, particularly in a trade secret case because, you know, one of the defenses in these types of cases is this is the particular claim that's been made for which trade secret protection is sought, and I need to be able to discuss with the client what that specific claim is. I would like for the client to be able to see whatever the evidentiary material is that underlies that complaint because the client may be able to say, in response to that, "No, we didn't use this or anything like this. This is how we did it and I need that in order to be able to defend the claim." And if I can't have that

communication with the client, that significantly hampers my ability to be able to defend the case, and that's my concern. I'm looking at this for a logistical, you know, not trying to be hypertechnical about it. This is a very basic thing for me. I'm concerned about being able to meaningfully communicate with my client and have the client be able to meaningful assist me in the defense of the case.

THE COURT: Why haven't you met and conferred with them about this protective order? It sounds like there's a whole lot you agree on.

MR. GILL: Well, there is, but, you know, to be candid, what happened was, you know, I felt like no good deed was going unpunished with respect to my communications with counsel. I told them candidly that what my view was on trade secret discovery about how I needed to know more of the substance of their claims to be able to respond, and it was obvious from the request for the meet-and-confer they were trying to game the system and file the motion to compel discovery against me before our responses are even due. And once it was obvious to me that was what was happening, frankly, I didn't feel there was enough good faith involved to make it worthwhile, and I thought, "You want to run to court and file a motion before my discovery is due? I'm perfectly happy to discuss this with the judge and have the judge resolve the issue in a way that, like it or not, it'll be done, that's what

I do." So, that's how that happened. I felt like I was candid and honest with counsel in my e-mail that's part of the record where I said, "Look, I need to know this stuff," and I felt like I was punished for it. So, that's why. Okay?

With respect to highly confidential information, that obviously presents a thornier issue, and I will be candid with the court on that, that because it's thornier, I think there are balancing interests involved and the answer to that issue is a little bit less clear to me about how to do it.

I do obviously -- you know, I have the same concern that I expressed to Your Honor with respect to confidential information. I need -- I desperately need to be able to discuss this meaningfully with my client and have my client assist me in the defense of this action, and I'm concerned about any procedure that interferes with my ability to do that.

And while we're at it, let's just go ahead, if you're okay with this, let's just go ahead and put all our cards on the table on this too, just so you know where I'm coming from.

We took over the case from Mr. Jacob's firm, Mr. Jacobs is in the courtroom this morning, and Mr. Jacobs and his firm basically serve as outside in-house counsel for this client. This is a small start-up company. So, at a minimum, I would like to be able to include Mr. Jacobs and Mr. Zobrist in the scope of any order that's entered. They -- you know, that gives me a level -- because they understand the client and the

industry -- that gives me a certain level of protection.

I clearly still would like to be able to discuss this with the client, and I'm obviously willing to abide by whatever reasonable restrictions the court feels are necessary in order to protect confidential information. But frankly, one of the ways to protect that confidential information is to just not have door-open discovery on any trade secrets at issue in the case. That, to me, is a good reason why the analysis that the district court used in that *DeRubeis* case from the Northern District of Georgia is helpful. It's helpful to not only allow the defendant to be able to formulate a defense to whatever the claims are, and it keeps the plaintiff from formulating its claims based on what it learns in discovery, but it also limits the risk of overexposure of highly confidential information in the context of trade secret cases.

Now, as I suggested to Your Honor, this is not my first trade secrets rodeo, and I have seen in these cases parties who request incredibly confidential information, whether it's warranted or not. Things like client lists, you know, information about processes that are not protected by patents that are therefore not public. Things that you -- that are really, you know, the goods in the company store, that if you lose this stuff, it could really impair your business going forward. I am very worried about that. And I think, as a defendant against whom I don't feel appropriate claims have

been asserted, I have an obligation to protect my client from that and that's what I'm trying to do with this. So, just so you know. You know, that's my rationale behind what it is I'm trying to do.

So, we're trying to get our hands around this. We're trying to get our hands around the documents. We're trying to get our hands around the other issues. We're trying to figure out, in addition to what we already have with regard to documents, what we need to obtain. So, we are trying to do what we need to do, but we feel like the plaintiff needs to do that too and they need to do this in the ordinary course and they need to not jump the gun and come in and try to, you know, cut us off at the knees on something which would limit our ability to deal with these claims on the merits which I think is particularly unfair when the claim hasn't been asserted, you know, in detail in the first instance. So, that's where I am.

I'm certainly happy to answer any questions Your Honor has for me.

THE COURT: Okay. I don't have any further questions. Thank you.

MR. GILL: All right. Thank you, Judge.

THE COURT: Would you like to respond to that, Mr. Rubman, in any way?

MR. RUBMAN: Thank you, Your Honor. Again, Gary Rubman from Covington on behalf of VGT.

I think a lot of the things that I would have wanted to respond to are the issues that I think you asked us not to argue, including whether or not we were specific enough. Unless you want to hear argument on that, I'll defer for another day.

THE COURT: I'm not going to decide that on this motion.

MR. RUBMAN: Okay. So then on that, you know, I'm happy to respond to any questions. We obviously have a very different understanding of some of the information in the slides. It sounds to me like they're still standing on the objection that they waived and that they told the court they were waiving.

So, unless you have questions, I'm happy to stand -- to sit.

THE COURT: Well, I do have one question about their -- they have an interrogatory to you to be more specific issued now.

MR. RUBMAN: Uh-huh.

THE COURT: You're saying, "I understand, I can't respond to that until we have a protective order in place."

MR. RUBMAN: Correct.

THE COURT: Is that correct?

MR. RUBMAN: Correct.

THE COURT: Do you plan -- and you don't have to tell

me this if you don't want to right now, but is it your plan to respond to that interrogatory and do you think that could take care of the specificity problem?

MR. RUBMAN: Absolutely.

THE COURT: So, a protective order could be essential to resolving a lot of these disputes, --

MR. RUBMAN: Absolutely.

THE COURT: -- it sounds like. Okay.

MR. RUBMAN: Absolutely. The concern is -- again, without going into the issue you don't want to debate, we think we've been specific enough. Put that aside. We're going to be even more specific. You know, we've given them specific names of specific source code already, but we're going to get even more specific. We have it drafted. We're ready, you know, we can serve this pretty quickly, but we're afraid of getting in an endless loop of motions and bothering you. And from what we've seen so far, we don't have a high degree of confidence that that's going to kind of lead to them raising their hands and saying, "Okay, we'll provide it." So, that's our concern. We believe they've waived this objection. But regardless, you know, we are happy -- we're ready, willing, and able to serve more detailed information on this, subject to a protective order, you know, with appropriate protections, and that's what we've been trying to do.

THE COURT: Thank you.

MR. RUBMAN: Do you have anything on the protective order?

MR. SAWYER: I do.

THE COURT: Thank you.

MR. RUBMAN: May Mr. Sawyer briefly respond on that?

THE COURT: Yes, he may.

MR. RUBMAN: Thank you.

MR. SAWYER: Thank you, Your Honor. Again, Mike Sawyer for Covington.

Just three quick points on the protective order. I have to confess I have not practiced for as long as Mr. Gill has, but in my experience it's quite common for there to be provisions that restrict the number of company representatives that can see confidential information.

I have two case cites I can offer Your Honor. The first is one from Chief Judge Frizzell, one of his cases in this court, it's *Skycam vs. Actioncam*, 09-CV-294. There, it was only two company reps. The other is *A Major Difference v. Wellspring Products*, that's 243 FRD 415 from the District of Colorado, and there it was just one company representative that had access to the confidential information.

THE COURT: Could you repeat that cite? 243 FRD --

MR. SAWYER: 415.

THE COURT: Thank you.

MR. SAWYER: Sure.

Again, in both those cases, it was also for highly confidential information there was a level that was outside counsel eyes only.

And so the second point would be to the concern about Mr. Jacobs. I believe Mr. Jacobs is still counsel of record, so he would be able to access the highly confidential information as outside counsel of record under the proposed protective order.

The third point I'd make is simply that with respect to the meet-and-confer, they had agreed to make best efforts to resolve this by November 8th. We didn't file our motion until November 14th. There was just no effort on their end to actually meet and confer about this. We would really have liked to resolve this without having to involve Your Honor but it just seemed like we couldn't get there without actually filing a motion.

THE COURT: Okay.

MR. SAWYER: Thank you, Your Honor.

THE COURT: Thank you.

Okay. I'm ready to issue my ruling today.

On the motion to compel trade secret discovery, docket 47 essentially has two parts, the part about the motion to compel trade secret discovery and the motion for entry of a protective order. That motion, as I've said, I really view this properly characterized as a motion to estop defendants from objecting to

requests for production 1, 6, and 7 on grounds that their trade secrets must be defined with greater particularity. So, that motion, as explained in that way, is going to be denied for three reasons.

First, and most importantly, this is a substantive question that I think should be resolved on the merits, if possible. Defendant has cited law that causes me some concern about compelling this discovery based purely on an e-mail agreement that occurred between counsel, and I'd prefer to have full briefing on the law and the objection before compelling these requests for production.

Second, plaintiff is not going to suffer any degree of prejudice from delay until this issue is properly presented to the court. Judge Frizzell will not enter a scheduling order until he rules on the motion to dismiss, so we're not facing any looming pending deadlines.

The first two reasons are my most important reasons for denying this motion, and I don't want to get too far in the weeds on this e-mail dispute that's been presented to me, but as a third reason for denying the motion, it does appear to me that there's a legitimate dispute as to the agreement reached as set forth in the consent motion to strike scheduling conference.

I do certainly take seriously any misrepresentations that were made to Judge Frizzell about an agreement that was

reached, and that's extremely important to me and that's what I'm focused on making sure did not occur in this case, and if it did, if plaintiff suffered any prejudice from that, that's something that I would be interested in vindicating. But I'm just not -- I think defendants have an arguable position that they were only agreeing not to ask for a stay of trade secret discovery pending resolution of a motion to dismiss rather than agreeing not to make any objections at all in the course -- or to those particular topics in the course of discovery.

In looking just at the consent motion to strike scheduling conference, that language that discovery be sequenced as to plaintiff's trade secret claim, that plain language to me does not mean they're going to start producing without making objections. It means they're not going to argue for a stay of the trade secret portion of discovery pending the outcome of their motion.

I certainly do understand plaintiff's position, reading the e-mail exchanges, but like I said, my principal concern is whether Judge Frizzell was misled in some way and then issued a ruling that caused plaintiff to suffer prejudice. That to me is really what I'm trying to make sure did not occur, and I'm not convinced that that occurred; therefore, I find no reason to circumvent normal discovery processes or to prevent defendant from raising this objection what I would call in the normal course, which is, I think, what defendant is asking to

do.

So, the motion in the way that I've limited it today, is denied. That doesn't mean I'm not going to give you a ruling on this substantive issue if it comes up again.

On the motion for protective order, it's going to be denied to the extent you're requesting me to enter that protective order right now. What I am going to do, because you all haven't seemed to be able to do this, is I'm going to order you to meet and confer, and I think a great time to do it would be right now that everybody is here after this hearing.

And I will give you a set deadline of two weeks from today for submitting either a joint protective order that you agree on or filing any necessary motions to resolve disputes. If you can do it quicker than that, that's even better, and I will get to it as quickly as I can. It sounds like you're in agreement on the source code. It sounds like you are in agreement on the motion to seal requirement and our local rules. As I said, I have some concerns, but again, I'm happy to consider a joint motion on that and I'll look at it, and I'll talk to Judge Frizzell about it, too, because that's going to impact his docket in a meaningful way as well. But like I said, if you want to agree to that, I will certainly consider it. And I think your sticking points are going to be more the confidential information and highly confidential information and who's going to be allowed to see this stuff.

I will tell you, to give you some guidance, that I do have concerns about defendant being able to meaningfully involve his client in this, so I do have concerns about that and, you know, I think that's something that's going to be important to consider. But again, I don't think there's any reason for me to get involved yet. I think you guys haven't met, you haven't talked, and I want all this before me in writing, I want to really make sure I understand exactly what it is that you're disputing and exactly what it is I need to resolve.

The good news is I've already heard all the arguments on it, so I will not set that motion for protective order unless I have other questions or other things that we haven't cleared up today, I don't plan to set that for hearing, as well. We've resolved most of those arg- -- the arguments have been made today that I think will be relevant to whatever it is that you get on file.

MR. GILL: May I address the court on the motion to seal issue?

THE COURT: Briefly.

MR. GILL: I just wanted to say, Your Honor, that if there is some sort of protocol or language that you would like to use in this district that the parties could use that would assist the court in dealing with this issue and protecting the court from motions by outside parties who get access to this data, we're happy to try to look at that and incorporate that.

If there's anything we can do to minimize the risk to the court from that, because as I understood Your Honor's comment earlier, one of the reasons that you like to have these sequential motions to seal is because you do sometimes get inquiries from outside parties like --

THE COURT: No. I'm sorry I wasn't clear on that. I've never seen an inquiry from an outside party on a motion to seal. What I was saying was that the underlying principle of those is that most of the time we expect documents and filings to be public, --

MR. GILL: Right.

THE COURT: -- and unless you tell us a good reason why they should be sealed, we like to have things public, if possible.

MR. GILL: Right.

THE COURT: And particularly what I think -- I wasn't here when they enacted that local rule, but part of the problem is people would have one exhibit that needed to be sealed, or maybe even four lines in an exhibit that needed to be sealed and they filed the whole motion under seal and nobody can see it and nobody has public access to it, and there's just no reason for that.

So, no, to answer your question, I've never seen an outside inquiry. That's not my concern. My concern is the court's ability to deny your motion to seal if it does not believe the

entire thing needs sealed.

MR. GILL: Okay. Fair enough.

THE COURT: So, yes.

Okay. Is there anything else that we need to take up here today, Mr. Rubman?

MR. RUBMAN: No, Your Honor.

THE COURT: Mr. Gill?

MR. GILL: No, ma'am. Thank you.

THE COURT: Thank you both.

THE DEPUTY COURT CLERK: All rise.

THE COURT: Court's adjourned.

(PROCEEDINGS CLOSED)

REPORTER'S CERTIFICATION

WHILE NOT PRESENT TO STENOGRAPHICALLY REPORT THE FOREGOING PROCEEDINGS, I CERTIFY THAT IT WAS TRANSCRIBED TO THE BEST OF MY ABILITY FROM A DIGITAL AUDIO RECORDING.

CERTIFIED: *s/Greg Bloxom*

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